

matter to another Judge for further proceedings.

(d) If the Judge denies a motion to disqualify, the Attorney General may determine the matter only as part of the Attorney General's review of the initial decision on appeal, if any.

§ 76.17 Rights of parties.

Except as otherwise limited by this part, all parties may:

(a) Be represented, advised and accompanied by an attorney at law who is a member in good standing of the bar of the District of Columbia or of any state, territory or commonwealth of the United States;

(b) Participate in any conference held by the Judge;

(c) Conduct discovery in accordance with 28 CFR 76.18 and 76.21;

(d) Agree to stipulations of fact or law, which shall be made part of the record;

(e) Present evidence relevant to the issues at the hearing;

(f) Present and cross-examine witnesses;

(g) Present oral argument at the adjudicatory proceeding as permitted by the Judge; and

(h) Submit a written brief and a proposed final order after the hearing.

§ 76.18 Authority of the Judge.

(a) The Judge shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Judge has the authority to:

(1) Set and change the date, time and place of the hearing upon reasonable notice to the parties;

(2) Continue or recess the hearing in whole or in part for a reasonable period of time;

(3) Hold conferences to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(4) Administer oaths and affirmations;

(5) Issue subpoenas in accordance with 21 U.S.C. 875 and 876 requiring the attendance of witnesses and the production of documents at dispositions or at hearings;

(6) Rule on motions and other procedural matters;

(7) Regulate the scope and timing of discovery;

(8) Regulate the course of the hearing and the conduct of representatives and parties;

(9) Examine witnesses;

(10) Receive, rule on, exclude, or limit evidence;

(11) Upon motion of a party, take official notice of facts;

(12) Upon motion of a party, decide cases, in whole or in part, by summary judgment where there is no disputed issue of material fact;

(13) Conduct any conference, argument, or hearing on motions in person or by telephone; and

(14) Exercise such other authority as necessary to carry out the responsibilities of the Judge under this part.

(c) The Judge does not have the authority to rule upon the validity of federal statutes or regulations.

§ 76.19 Prehearing conferences.

(a) *Purpose and scope.* Upon motion of a party or in the Judge's discretion, the Judge may direct the parties or their counsel to participate in a prehearing conference at any reasonable time prior to a hearing, or during the course of a hearing, when the Judge finds that the proceeding would be expedited by such a conference. Prehearing conferences normally shall be conducted by telephone unless, in the opinion of the Judge, such method would be impractical, or when such conferences can be conducted in a more expeditious or effective manner by correspondence or personal appearance. Reasonable notice of the time, place, and manner of the prehearing conference shall be given. At the conference, the following matters may be considered:

(1) The simplification of issues;

(2) The necessity of amendments to pleadings;

(3) The possibility of obtaining stipulations of facts and of the authenticity, accuracy, and admissibility of documents, which will avoid unnecessary proof;

(4) The limitations on the number of expert or other witnesses;

(5) Negotiation, compromise, or settlement of issues;

(6) The exchange of copies of proposed exhibits;

(7) The identification of documents or matters of which official notice may be required;

(8) A schedule to be followed by the parties for completion of the actions decided at the conference; and

(9) Such other matters, including the disposition of pending motions and resolution of issues regarding the admissibility of evidence, as may expedite and aid in the disposition of the proceeding.

(b) *Reporting.* A verbatim record of the conference shall not be kept unless directed by the Judge.

(c) *Order.* Actions taken as a result of a prehearing conference shall be reduced to a written order unless the Judge concludes that a stenographic report shall suffice or, if the conference takes place within seven (7) days of the beginning of a hearing, and the Judge elects to make a statement on the record at the hearing summarizing the actions taken.

§ 76.20 Consent Order or settlement prior to hearing.

(a) *Generally.* At any time after the commencement of a proceeding, the parties jointly may move to defer the hearing for a reasonable time to permit negotiation of a settlement or an agreement containing findings and an order disposing of the whole or any part of the proceeding. The allowance of such deferment and the duration thereof shall be at the discretion of the Judge, after consideration of such factors as the nature of the proceeding, the requirements of the public interest, the representations of the parties, and the probability of reaching an agreement which will result in a just disposition of the issue involved. The Judge may require the parties to submit progress reports on a regular basis as to the status of negotiations.

(b) *Consent orders.* Any agreement containing consent findings and an order disposing of a proceeding or any part thereof shall also provide:

(1) That the order shall have the same force and effect as an order made after full hearing;

(2) That the entire record on which any order may be based shall consist solely of the complaint or notice of ad-

ministrative determination (or amended notice, if one is filed), as appropriate, and the agreement;

(3) A waiver of any further procedural steps before the Judge; and

(4) A waiver of any right to challenge or contest the validity of the order entered into in accordance with the agreement.

(c) *Submission.* On or before the expiration of the time granted for negotiations, the parties or their counsel may:

(1) Submit the proposed agreement containing consent findings and an order for consideration by the Judge; or

(2) Notify the Judge that the parties have reached a full settlement and have agreed to dismissal of the action; or

(3) Inform the Judge that agreement cannot be reached.

(d) *Disposition.* In the event that an agreement containing consent findings and an order is submitted, the Judge, within thirty (30) days or as soon as practicable thereafter may, if satisfied with its timeliness, form, and substance, accept such agreement by issuing a decision based upon the agreed findings. The Judge has the discretionary authority to conduct a hearing to determine the fairness of the agreement, consent findings, and proposed order.

§ 76.21 Discovery.

(a) *Scope.* Discovery under this part covers any matter not otherwise privileged or protected by law, which is directly relevant to the issues involved in the case, including the existence, description, nature, custody, condition, and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. To the extent not inconsistent with this part, the Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Judge. However, unless otherwise stated in this part, the Federal Rules shall be deemed to be instructive rather than controlling.

(b) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of